

OPINION
65-403

April 21, 1965 (OPINION)

The Honorable R. Fay Brown

State Representative

RE: Taxation - Sales and Use Tax - Application of Use Tax

Your letter of April 14, 1965, with reference to sales and use tax, has been received.

You ask specifically whether the use tax would take the place of the sales tax if House Bill No. 698 is referred as now appears likely.

The use tax is by law declared to be supplementary to the retail sales tax (section 57-40-03 of the North Dakota Century Code). The use tax has been on our statute books for a long time with minor amendments from time to time, while the sales tax is reenacted every two years and expires by its own terms on June thirtieth of each odd numbered year.

It is my opinion that the use tax would replace the sales tax in most areas if the referral petitions are filed suspending the most recently enacted retail sales tax law. However, not all items will be covered by the use tax. As an example, some of the items and services mentioned in section 57-39-02 would not be covered. It could, of course, be argued that since the use tax supplements the sales tax it would not take over since the tax it supplements no longer exists and therefore there is nothing left for it to supplement. I do not believe this to be a valid argument, but since it raises a question and since this matter is of great importance to the State, it might be well to get a court decision or determination in regard to this problem because any opinion from this office would not be binding on the taxpayers of this State and is subject to challenge in the courts of this State. It should be noted that the question here involved pertains to the two and one-quarter percent tax and not the three percent tax.

The opening statement of section 57-40-03 of the North Dakota Century Code, as amended, on EXEMPTIONS deserves special consideration. It provides that "* * * This chapter hereby is declared to be supplementary to the retail sales laws of this state and shall not apply to: * * *", then follow the enumerated exemptions.

It is to be noted that the use tax is to be considered supplementary to the sales tax Act. It is supplementary "to" rather than "of." The term "supplementary" is defined by Webster's Dictionary to mean: "Added as a supplement; additional." The true meaning of words and phrases is determined from the context in which they are found. In this instance the phrase is found in the EXEMPTION section rather than in the IMPOSITION section and supports the proposition that the use tax was to cover in those instances in which the sales tax was

not applicable or was not paid. While the use tax and sales tax are different taxes and are applied differently they have the same purpose and can bring about similar results.

It is also significant to note that most of chapter 57-39 of the North Dakota Century Code pertaining to the administration of the sales tax is permanent. The section imposing the sales tax is self-limited and expires on its own terms. The use tax is not self-limited. It is permanent. In many instances the use tax statutes adopt definitions and procedures set forth in the permanent portion of the sales tax Act. Because the sales tax Act expires on its own terms it is difficult to consider the use tax as a supplement of the sales tax. The use tax and its provisions clearly indicate that the use tax was designed as an addition to the sales tax Act. The manner in which the term "supplementary to" is used and from the examination of the provisions relating thereto evinces a deliberate design by the Legislature that the use tax was to be and is in addition to the sales tax and is not dependent upon the existence of that section of the sales tax Act which imposes the tax. It is also observed that chapter 57-40.1, as amended by the Thirty-ninth Legislative Assembly, provides for a two percent use tax on automobiles. This is a separate use tax.

ATTORNEY GENERAL

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